

**PROPOSED AMENDMENTS  
TO THE  
CALIFORNIA CODE OF REGULATIONS  
TITLE 23, STATE WATER RESOURCES CONTROL BOARD  
SECTION 648, Laws Governing Adjudicative Proceedings**

**INITIAL STATEMENT OF REASONS**

**JANUARY 2002**

**STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD**

## INITIAL STATEMENT OF REASONS

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### **SECTION 648. Laws Governing Adjudicative Proceedings.**

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE PROPOSED REGULATION IS INTENDED TO ADDRESS

Section 648(b) of Title 23 of the California Code of Regulations provides that, subject to certain exceptions, all adjudicative proceedings before the State Board and the regional water quality control boards (regional boards) shall be governed by Chapter 4.5 of the Administrative Procedure Act (APA, commencing with section 11400 of the Government Code). Section 648(c) of Title 23 indicates which Articles in Chapter 4.5 of the APA are not applicable to such proceedings.

In 1998, the California Legislature amended Chapter 4.5 of the APA to add Article 16 (A.B. 2164, codified at Government Code sections 11475 to 11475.70). Article 16 made the Code of Judicial Ethics, which was adopted by the Supreme Court for the conduct of judges, applicable to administrative law judges (Government Code section 11475.10(a)(1)). Article 16 also provided that the Code of Judicial Ethics would apply to presiding officers of administrative agencies if the Article was made applicable by agency regulation (Government Code section 11475.10(a)(2)). By definition, all members of the State and regional boards are presiding officers (Government Code section 11405.80).

Since 23 CCR section 648(b), which predated Article 16 of the APA, made all of Chapter 4.5 of the APA applicable (unless excepted under 648(c)), Article 16 arguably became applicable to all members of the State Board and regional boards.

### SPECIFIC PURPOSE AND NECESSITY OF THE PROPOSED REGULATION

The purpose of the proposed amendment of section 648(c) is to clarify that Article 16 will not apply to State Board and regional board members. Article 16 grants agencies the discretion to determine, by promulgating regulations, if its provisions should be made applicable to presiding officers within the agency. In terms of its applicability to presiding officers at the State Board and regional boards, Article 16 was unintentionally given effect due to the structure of pre-existing regulations (section 648(b)). Experience with Article 16 has indicated that the majority of its provisions are duplicative of existing law in the APA and Political Reform Act (Government Code section 81000 et seq), and that the remaining provisions are unduly vague or not conducive to the efficient performance of the duties of presiding officers. For these reasons, the State Board proposes to amend 648(c) to clarify that Article 16 will not apply to such officers.

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#### TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR SIMILAR DOCUMENTS

The SWRCB did not rely on technical, theoretical, or empirical studies, reports, or similar documents in proposing this amended regulation.

The proposed amendment does not mandate the use of specific technologies or equipment.

#### ALTERNATIVES TO THE REGULATION/SMALL BUSINESS IMPACT

The SWRCB did not identify any alternatives that would lessen any adverse impact on small business. The SWRCB has determined that the proposed amendment will not have a significant adverse economic impact on business. The amendment pertains to the conduct of State Board and regional board members and does not impose any obligations on the business community or otherwise affect the cost of doing business.

#### DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

The proposed amendment does not unnecessarily duplicate or conflict with federal regulations. A review of the Code of Federal Regulations did not indicate the existence of duplicative or conflicting law.

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